

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 29, 2011

No. 09-60866
Summary Calendar

Lyle W. Cayce
Clerk

EQUIPMENT HOLDING COMPANY, L.L.C.; RONALD J. ADAMS,

Petitioners - Appellees

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellant

Appeal from the Decision of
the United States Tax Court
No. 18737-07

Before BENAVIDES, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

Appellant Commissioner of Internal Revenue appeals from a final order of the Tax Court. The sole issue presented is whether an understatement of income resulting from an overstatement of the tax basis of sold property can qualify as an omission from gross income giving rise to the extended, six-year period for tax assessment. A panel of this Court has decided this question on facts materially identical to the facts in the instant case and concluded that such

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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an overstatement does not trigger the extended six-year assessment period in the Tax Code, 26 U.S.C. § 6501(e)(1)(A). *Burks v. United States*, 633 F.3d 347 (5th Cir.), *petition for cert. filed*, (Aug 11, 2011)(NO. 11-178, 11A9). The argument presented by the Commissioner is foreclosed by our circuit precedent, and the Commissioner recognizes the binding precedent, but nevertheless argues that *Burks* was wrongly decided to preserve the issue in the event the Supreme Court grants certiorari and reverses, vacates, or otherwise disturbs our decision in *Burks*. This panel is bound by our precedent.

The judgment of the Tax Court is AFFIRMED.